

Leon

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission
DOCKETED

FEB 15 2005

RECEIVED

FEB 16 2005

AZ Corporation Commission
Director Of Utilities

DOCKETED BY

NR

IN THE MATTER OF THE APPLICATION OF
A.R.C. NETWORKS, INC. dba INFOHIGHWAY
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04271A-04-0589

DECISION NO. 67580

ORDER

Open Meeting
February 8 and 9, 2005
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On August 9, 2004, A.R.C. Networks, Inc. dba InfoHighway ("A.R.C." or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

4. A.R.C. has authority to transact business in the State of Arizona.

5. On October 22, 2004, Applicant filed an Affidavit of Publication indicating

1 compliance with the Commission's notice requirements.

2 6. On December 20, 2004, the Commission's Utilities Division Staff ("Staff") filed a
3 Staff Report which includes Staff's fair value rate base determination in this matter and recommends
4 approval of the application subject to certain conditions.

5 7. In the Staff Report, Staff stated that A.R.C. provided audited financial statements of its
6 parent company, Infohighway Communications Corporation, for the 12 months ending December 31,
7 2003, which list assets in excess of \$26 million, equity in excess of \$9 million and a net income in
8 excess of \$4 million.

9 8. In its Staff Report, Staff stated that based on information obtained from the Applicant,
10 it has determined that A.R.C.'s fair value rate base ("FVRB") is zero and is not useful in a fair value
11 analysis, and is not useful in setting rates. Staff further stated that in general, rates for competitive
12 services are not set according to rate of return regulation. Staff has reviewed the rates to be charged
13 by the Applicant and believes they are just and reasonable as they are comparable to several long
14 distance carriers operating in Arizona and comparable to the rates the Applicant charges in other
15 jurisdictions. Therefore, while Staff considered the FVRB information submitted by the Applicant,
16 the FVRB information provided should not be given substantial weight in this analysis.

17 9. Staff believes that A.R.C. has no market power and that the reasonableness of its rates
18 will be evaluated in a market with numerous competitors. In light of the competitive market in which
19 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
20 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
21 approve them.

22 10. Staff recommended approval of A.R.C.'s application subject to the following:

23 (a) The Applicant should be ordered to comply with all Commission rules, orders,
24 and other requirements relevant to the provision of intrastate telecommunications
25 service;

26 (b) The Applicant should be ordered to maintain its accounts and records as
27 required by the Commission;

28 (c) The Applicant should be ordered to file with the Commission all financial and
 other reports that the Commission may require, and in a form and at such times as the

Commission may designate;

(d) The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations including, but not limited to customer complaints;

(g) The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

(i) If at some future date, the Applicant wants to collect from its resold interexchange customers an advance, deposit and/or prepayment, Staff recommends that the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the Decision in this docket and must explain the Applicant's plans for procuring a performance bond;

(j) The Applicant's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate; and

(m) In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107.¹

11. Staff further recommended that A.R.C.'s Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

¹ Pursuant to A.A.C. R14-2-1107, the Applicant is required to comply and obtain Commission authorization of compliance with all of the requirements, including but not limited to the notice requirements, prior to discontinuance of service and/or abandonment of its service area.

12. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact No. 11, that A.R.C.'s Certificate should become null and void without further Order of the Commission, and that no time extensions for compliance should be granted.

13. A.R.C. will not collect advances, prepayments or deposits from its customers.

14. The rates proposed by this filing are for competitive services.

15. Staff's recommendations as set forth herein are reasonable.

16. A.R.C.'s fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations in Findings of Fact No. 8, 9, 10, 11, and 12 should be adopted.

7. A.R.C.'s fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. A.R.C.'s rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of A.R.C. Networks, Inc. dba InfoHighway for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services, is hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of

Fact No. 11 above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 8, 9, 10, 11, and 12 above are hereby adopted.


IT IS FURTHER ORDERED that A.R.C. Networks, Inc. dba InfoHighway shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 10 and 11 above.

IT IS FURTHER ORDERED that if A.R.C. Networks, Inc. dba InfoHighway fails to meet the timeframes outlined in Findings of Fact. No. 11 above that the Certificate conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that A.R.C. Networks, Inc. dba InfoHighway shall not require its Arizona customers to pay advances, prepayments or deposits for any of its products or services.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

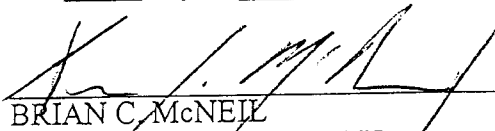

COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 15th day of Feb., 2005.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mlj

SERVICE LIST FOR:

A.R.C. NETWORKS, INC. DBA INFOHIGHWAY

DOCKET NO.:

T-04271A-04-0589

Glenn S. Richards
2300 N Street NW
Washington, DC 20037-1128
Counsel for A.R.C. Networks, Inc. dba InfoHighway

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007